**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**
**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

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| In re Application | | ) | PATENT APPLICATION |
| | | ) | |
| Inventors: | Tu, et al. | ) | |
| | | ) | Art Unit: 2141 |
| Application No.: | 09/618,956 | ) | |
| | | ) | Examiner: Coulter, Kenneth R. |
| Filed: | July 19, 2000 | ) | |
| | | ) | Customer No. 28554 |
| Title: REMOTE ACCESS COMMUNICATION ARCHITECTURE APPARATUS AND METHOD | | ) | |

APPEAL BRIEF

Mail Stop Appeal Brief – Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This brief is submitted in accordance with 37 C.F.R. §41.37, following the Notice of Appeal filed by Appellant(s) on October 3, 2007, the Notification of Non-Compliant Appeal Brief mailed on June 14, 2007 and the Notice of Non-Compliant Appeal Brief mailed on August 20, 2007. The fee set forth in 1.17(c) was previously submitted.

Table of Contents

I. REAL PARTY IN INTEREST *(37 C.F.R. §41.37(c)(i))*

The real party in interest is fusionOne, Inc.

II. RELATED APPEALS AND INTERFERENCES *(37 C.F.R. §41.37(c)(ii))*

Appellant knows of no other appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS *(37 C.F.R. §41.37(c)(iii))*

Claims 1-18 are pending in this application. All claims stand finally rejected.

Appellant herein appeals from the final rejection of claims 1-18.

## IV. STATUS OF AMENDMENTS *(37 C.F.R. §41.37(c)(iv))*

No amendments are submitted with this Brief. All amendments to date have been entered.

## V. SUMMARY OF CLAIMED SUBJECT MATTER *(37 C.F.R. §41.37(c)(v))*

The invention recited in claims 1-18 generally relates to "an apparatus and method for implementing a communication architecture for remotely accessing a computer by means of a remote device without the need for special software applications on the remote device." (Specification, p. 1, lines 21-25). In particular, as explained in the Background of the Invention Section, specialized remote access software systems were known at the time of the invention to establish a direct connection between a remote computer and a base computer. There were two such remote access systems known at the time of the invention. One was referred as a remote access server ("RAS") system and the other was referred to as a remote control system ("RCS"). As stated in the Background at pages 1-4:

> Remote access systems can generally be categorized into two types of systems. The first system is generally referred to as a remote access server (RAS) system. A RAS system usually comprises server RAS software residing on a RAS server and client RAS software residing on a "remote" computer. The RAS server is coupled to resources (e.g., printers, files, other nodes) which are remotely accessed by a user of the system. In operation, a user of the remote computer connects to the RAS server via a dial-in telephone connection. Upon connection, the RAS server queries for the user's access credentials (e.g., user name and password). Upon authentication of the user's access credentials, the user is granted access to resources on the RAS server and/or resources on other nodes connected to the RAS server to which the user is authorized access. The RAS software manages the connection process, the authentication process, the access privileges, and the data transfers between the RAS server and the remote computer. RAS systems are also used by commercial service providers, such as Internet Access Providers (ISPs) to allow their customers access into their network resources. . . .
>
> The other type of remote access system is generally referred to as a remote control system (RCS). RCSs allow a remote user to not only access resources on another "host" computer, but also allow the user to control the host computer. RCSs typically display on the remote computer what would normally be displayed on the host computer (known as screen emulation). In this way, the user is able to control the host computer from the remote computer as if the user was directly accessing the host computer. An example of a commercially available RCS product is PC Anywhere™ by Symantec Corp™. Like RAS systems, RCS allows a remote user to connect via a conventional means, including a telephone connection and via the Internet. Again, special software is required on both nodes.

There were several disadvantages associated with RAS and RCS systems (as set forth in the application at page 4, line 11 et. seq.). The present invention overcomes these problems by providing a secure connection between a remote computing device and a base computing device using an open application standard (such as a conventional web browser (Specification, p. 6, lines 5-9). The present invention accomplishes this by routing communications through a central server 12 (Fig. 1).

As shown in Fig. 1 and as recited in claims 1-18, a system is provided whereby a user of a remote device 16 contacts the central server system 12 in order to perform desired tasks on a base computer 16. "Such tasks may include checking email on the base computer, obtaining files from the base computer, copying files from the remote computer to the base computer, or accessing an address book on the base computer." (Specification, p. 7, lines 1-4). The central server system 12 waits for contact by a base computer 14. Once contacted by the base computer 14, the central server 12 relays the requested tasks to the base computer 14, which in turn performs the requested tasks and returns the requested information, if any, to the central server system 12. The central server system 12 then relays the information to the remote device 16.

In order to enable secure communications between the remote device and base computer, even where the base computer is located behind a firewall, a communications session is established initially by contact from the base computer itself. The application states:

> The base computer 14, via an agent installed thereon, will contact the central server 12 from time to time to determine if a remote user session has been established... Thus, the base computer 14 intermittently contacts the central server system 12 to determine whether the central server system 12 has established a session with a remote user. When a session has been established between a remote device 16 and the central server system 12, the central server system 12 replies to the base computers next intermittent contact with an IP address and port number for the base computer 14 to establish a socket connection with a server in the central server system 12. The IP address and port number correspond to a server in the central server system 12 handling the particular session task requests. That socket connection will be maintained between the base computer 14 and the server until the server ends the session or a predefined timeout period expires. (Specification, p. 13, lines 1-16).

The invention recited in claim 1 relates to "a method for remotely accessing a base computer from internet-enabled remote devices wherein the remote devices do not include remote access server software or remote control system software." The specification at page 6, lines 13-20, and as shown in

Fig. 1, discloses a system where a remote device, such as a laptop computer, contacts a base computer. The remote device does not include remote access server software or remote control system software, but rather uses a conventional web browser in order to affect contact with the base computer.

Claim 1 further recites, "establishing a remote access session with one of the remote devices at an internet central server system." As set forth in the specification at least at page 18, lines 4-18, and as shown in Figs. 1 and 4, a remote access session with a central server system 12 may be established via a remote device 16.

Claim 1 further recites, "presenting a task list to the remote device from said central server system; receiving a task selection at said central server system from the remote device." As set forth in the specification at least at page 18, line18 through page 19, line 6, and as shown in Figs. 1 and 4, the remote device 16 is presented with a list of possible tasks, and that the user selects a task and that the selection of the task is received at the central server system 12.

Claim 1 further recites, "establishing a persistent connection between said central server system and a base computer in response to intermittent contact from said base computer to said central server system." As set forth in the specification at least at page 17, lines 4-15, and as shown in Figs. 1 and 4, the base computer 14 will intermittently contact central server system 12 to determine if a remote session has been established. If so, a remote session has been established. Base computer 14 then establishes the specified socket connection and awaits the tasks.

Claim 1 further recites, "transmitting said task from said central server system to the base computer via said connection between said central server system and said base computer; receiving at said central server system task data from the base computer responsive to said transmitted task; and presenting from said central server system a task response compiled from said task data to the remote device." As set forth in the specification at least at page 19, lines 6-16, and as shown in Figs. 1 and 4, the central server system 12 transmits the task selected by the remote device 16 to the connected base computer 16. Upon receipt of the task request, base computer 14 performs the task and transmits data to the central server system 12. The central server system 12 then presents the information to the remote device in a manner viewable by the remote device.

Independent claim 12 is similar to claim 1, but instead of a method, recites a remote access system including:

> a server system in operative communication with at least one remote device and at least one base computer responsive to

> establishment of a respective connection by said base computer and said remote device;
>
> a task transmitter within said central server system for transmitting tasks submitted by said at least one remote device to said at least one base computer; and
>
> a task data receiver within said central server system for receiving task data from said at least one base computers and returned to the remote device.

Each of these limitations has been discussed above with respect to claim 1.

Independent claim 16 is similar to claim 12, but instead relates specifically to a server such as the central server system 12. Claim 16 recites:

> an intermediary server coupled to a network and a mobile device, the intermediary server interpreting a task list including at least one item from the remote device and passing the list to a destination agent on a base device in a secure environment when the agent on the base device makes itself available for requests by logging into the intermediary server and establishing a connection with the intermediary server.

These limitations have been discussed above with respect to claim 1.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL *(37 C.F.R. §41.37(c)(vi))*

Whether claims 1-11 of the application are properly rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement

Whether claims 1-11 are properly rejected under 35 U.S.C. §101 because the claimed invention lacks patentable utility.

Whether claims 1-9 and 12-18 are properly rejected under 35 U.S.C. §102(e) as being clearly anticipated by U.S. Patent No. 6,757,712 to Bastian ("Bastian").

VII. ARGUMENT *(37 C.F.R. §41.37(c)(vii))*

Rejection of Claims 1-11 Under 35 U.S.C. § 112

Claims 1-11 of the application are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the enablement requirement. Applicant respectfully traverses the rejection as follows.

The Examiner has indicated that the limitation, "...the remote devices do not include remote access server software or remote control server software" in claim 1 was not supported by the application because the application discloses that the remote devices remotely connect with the central server system, and therefore, the above claim limitation is contradicted by the specification.

Applicants respectfully submit that the Examiner has given an overly broad interpretation to the terms "remote access server software" and "remote control server software." It is respectfully submitted that, if those terms are properly construed in accordance with the definitions of those terms set forth in the specification, there is no contradiction. In particular, at pages 1-4 of the Background section, set forth above, applicants describe "remote access server (RAS) software" and "remote control server (RCS) software. A RAS system employs specialized server software on a RAS server and specialized client RAS software residing on a remote computer. In operation, a user of the remote computer connects to the RAS server via a dial-in telephone connection. Upon connection, the RAS server queries for the user's access credentials (e.g., user name and password). Upon authentication of the user's access credentials, the user is granted access to resources on the RAS server and/or resources on other nodes connected to the RAS server to which the user is authorized access. The RAS software manages the connection process, the authentication process, the access privileges, and the data transfers between the RAS server and the remote computer.

Similarly, an RCS system employs specialized server and client software. RCS systems allow a remote user to not only access resources on a base computer from a remote computer, but also allow the user to control the base computer from a remote computer. RCS systems typically display on the remote computer what would normally be displayed on the base computer (known as screen emulation). In this way, the user is able to control the base computer from the remote computer as if the user was directly accessing the base computer.

It is a stated feature of the present invention to allow communications between remote and base computers **without** using RAS or RCS systems. As recited in claims 1-11, and as described in the specification, communications are established between the remote device and the base computing device.

However, communications are not established using a RAS or RCS system. The system uses a central server system and standard communication interfaces such as a standard web browser.

Accordingly, there is no contradiction between claims 1-11 and the specification. The claims recite a system for establishing communications between a remote device and a base computing device that does not use a RAS or RCS system. This system is described in the specification. It is therefore respectfully submitted that claims 1-11 are properly supported under Section 35 U.S.C. §112, first paragraph, and it is respectfully requested that the rejection of claims 1-11 on these grounds be withdrawn.

Rejection of Claims 1-11 Under 35 U.S.C. §101

Claims 1-11 are rejected under 35 U.S.C. §101 because the claimed invention lacks patentable utility. In particular, the Examiner has indicated that claim 1 lacks patentable utility because claim 1 was alleged not to be supported by the specification (on the grounds discussed above with respect to the rejection under Section 112, first paragraph).

As discussed above, it is respectfully submitted that claims 1-11 are supported under Section 112. Accordingly, it is respectfully submitted that claim 1 and claims 2-11 dependent thereon have clear utility, and it is respectfully requested that the rejection on Section 101 grounds be withdrawn. Based on the above, it is respectfully requested that the rejection of claims 1-11 under 35 U.S.C. §101 be withdrawn.

Rejection of Claims 1-9 and 12-18 Under 35 U.S.C. §102(e)

Claims 1-9 and 12-18 are rejected under 35 U.S.C. §102(e) as being clearly anticipated by Bastian. Applicants respectfully traverse the rejection as follows.

Bastian relates in general to a system for permitting passengers on board an aircraft to send and receive electronic data. As shown in Fig. 1 of the reference, the components of the system on board the aircraft include a server 20 having a plurality of nodes to which computer terminals 40 are attached. The computer terminals are laptop or palm-top personal computers belonging to the various passengers on board or fixed terminals within the aircraft. Connected to the server is one or more radios 60. This permits data to be transferred from the server 20 on the plane to a base station 90 on the ground using communications network 80.

A problem presented in the prior art, and a problem addressed by the present invention, is how to allow the transfer of information to/from a base computer where the request for information is generated from a remote device outside of the security set up for the base computer. This problem is nowhere contemplated in Bastian, nor are the solutions of the present invention contemplated in Bastian.

The present invention addresses this problem by the base computer 14 intermittently establishing contact with a central server system 12, which server system 12 in turn is in communication with a remote device 16. As set forth in the Summary section, the remote device 16 may transmit tasks intended for the base device. These tasks are received by the server system 12 where they are held. When the base device next establishes a connection with the central server system 12, the central server system indicates the request to perform the task(s) from the remote device 12. As communication originates with the base device, security of the base device is maintained.

Referring now to specific claim language, Claims 1-9 each expressly recites features that are nowhere disclosed, taught or suggested in Bastian. For example, Independent Claim 1 recites in part:

> establishing a persistent connection between said central server system and a base computer **in response to intermittent contact from said base computer to said central server system**. (Emphasis added).

Nowhere does Bastian disclose or suggest that communications between a base computer and a central server system are established in response to contact, intermittent or otherwise, from the base computer to the central server system. In Bastian, the communications between the server system and the base stations are initiated by the server system.

The Examiner indicated that the above-described claim limitations were shown in Bastian in the "Abstract; Figs. 1, 3; col. 3, lines 4-23; col. 8, lines 1-3." Applicants have carefully reviewed Bastian at these sections and can discern no such disclosure, teaching or suggestion. In fact, the final clause cited by the Examiner states that the claimed invention is shown at col. 7, lines 51-58, where the Examiner claims the reference discloses, "The **server (base station) determines** the appropriate time to **initiate a data exchange with the station 90 (server)**." (Emphasis in original). The Examiner has engaged in a re-writing of the specification to support the rejection. The specification does not include the terms in the parentheses. The section from Bastian recited by the Examiner reads verbatim:

> The server determines the appropriate time to initiate a data exchange with the station 90.

The "server" disclosed in Bastian here is the server 20 on the airplane. It is not a base station as indicated by the Examiner. Similarly, the "station 90" disclosed in Bastian here is the base station 90 on the ground. Accordingly, the section cited by the Examiner supports applicants' position that the communication in Bastian is initiated by the server on the airplane, and not by the base computing device as specifically recited in the claims.

In further support of the rejection, the Examiner further cites to col. 16, lines 49-54, where the Examiner claims the reference discloses, "The **aircraft initiates communications** and continues to communicate with **station 120 (server)**." (Emphasis in original). The Examiner's indication that the reference discloses "The aircraft initiates communications…" supports applicants' position that the communication in Bastian is initiated by the server on the airplane, and not by the base computing device as specifically recited in the claims. Moreover, the Examiner has engaged in re-writing the specification to support the rejection. The specification does not include the term "server" in the parentheses of the quoted statement from the Office action. The section from Bastian recited by the Examiner reads verbatim:

> The aircraft initiates communications and continues to communicate with station 120.

The "station 120" recited here is the base station 120 on the ground.

Applicants respectfully submit that Bastian has no disclosure, teaching or suggestion of the invention recited in claims 1-11, and that the sections cited by the Examiner do not in fact support the rejection. Accordingly, it is respectfully requested that the rejection of claims 1-9 on the stated grounds be withdrawn.

Similarly, independent Claim 12, and Claims 13-15 dependent thereon, recite in part:

> a server system in operative communication at least one remote device and at least one base computer **responsive to establishment of a respective connection by said base computer** and said remote device. (Emphasis added).

Again, a claim reciting this feature is nowhere disclosed, taught or suggested in Bastian. Bastian discloses a server establishing a connection with a base station. Bastian does not disclose a base computing device establishing a connection with a server.

Similarly, independent Claim 16, and Claims 17-18 dependent thereon, recite in part:

> an intermediary server coupled to a network and a mobile device, the intermediary server interpreting a task list … **when the agent on the base device makes itself available for requests by logging into the intermediary server and establishing a connection with the intermediary server**. (Emphasis added).

As discussed above, Bastian has no disclosure, teaching or suggestion of a base device logging into an intermediary server and establishing a connection with the intermediary server.

It is axiomatic that each and every claim limitation must be found in a single prior art reference to support a rejection under §102. *Apple Computer, Inc. v. Articulate Systems, Inc.*, 234 F.3d 14, 20 (Fed. Cir. 2000). Omission of any claimed element, no matter how insubstantial, is grounds for traversing a rejection based on §102. *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542 (Fed. Cir. 1983). As Bastian has no disclosure, teaching or suggestion of a system where communication is initiated by the base device, and as Bastian does not even address the problem to which this solution is directed, it is respectfully submitted that the invention recited in Claims 1-9 and 12-18 is patentable over the cited reference. It is therefore respectfully requested that the rejection of these claims on §102 grounds be withdrawn.

Based on the above, it is respectfully requested that the rejection of claims 1-9 and 12-18 under 35 U.S.C. §102(e) be withdrawn.

CONCLUSION

Based on the above, it is respectfully submitted that claims 1-18 are patentable over the cited reference, and it is respectfully requested that the rejections of claims 1-18 be withdrawn.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 501826 for any matter in connection with this Appeal Brief, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: October 22, 2007

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VIII. CLAIMS APPENDIX *(37 C.F.R. §41.37(c)(viii))*

1. (previously presented) A method for remotely accessing a base computer from internet-enabled remote devices wherein the remote devices do not include remote access server software or remote control system software, comprising in combination:

establishing a remote access session with one of the remote devices at an internet central server system;

presenting a task list to the remote device from said central server system;

receiving a task selection at said central server system from the remote device;

establishing a persistent connection between said central server system and a base computer in response to intermittent contact from said base computer to said central server system;

transmitting said task from said central server system to the base computer via said connection between said central server system and said base computer;

receiving at said central server system task data from the base computer responsive to said transmitted task; and

presenting from said central server system a task response compiled from said task data to the remote device.

2. (original) The method of claim 1 further comprising terminating said remote access session by said central server system.

3. (original) The method of claim 2 further comprising communicating said task response via a protocol compatible with the remote device.

4. (original) The method of claim 3 wherein said protocol is TCP/IP for remote devices configured as computers.

5. (original) The method of claim 3 wherein said protocol is WAP for remote devices configured as wireless communication devices.

6. (original) The method of claim 1 further comprising authenticating the user of the remote device while establishing the remote access session.

7. (original) The method of claim 6 further comprising providing a secure communication means while establishing the remote access session and continuing said secure communication between said central server system and the remote device until said session is terminated.

8. (original) The method of claim 7 further comprising encrypting the communications between said central server system and the base computer.

9. (original) The method of claim 8 further comprising establishing a communication link between the base computer and the central server system when the base computer is not already connected to the internet.

10. (original) The method of claim 9 further comprising dialing up a base computer modem by the central server system to wake up the base computer to establish said communication link.

11. (original) The method of claim 10 further comprising disconnecting from the dial up connection by the base computer and then reestablishing the communication link via the internet between said central server system and said base computer.

12. (previously presented) A remote access system, comprising in combination:

a server system in operative communication with at least one remote device and at least one base computer responsive to establishment of a respective connection by said base computer and said remote device;

a task transmitter within said central server system for transmitting tasks submitted by said at least one remote device to said at least one base computer; and

a task data receiver within said central server system for receiving task data from said at least one base computers and returned to the remote device.

13. (previously presented) The remote access system of claim 12 further comprising security services enabled between said server system and said at least one remote device, and between said server system and at least one base computers.

14. (previously presented) The remote access system of claim 13 wherein said security services between said server system and at least one remote device include means for authenticating the user of the remote device.

15. (previously presented) The remote access system of claim 14 wherein said security services between said server system and at least one base computer includes encryption.

16. (previously presented) A system, comprising:

an intermediary server coupled to a network and a mobile device, the intermediary server interpreting a task list including at least one item from the remote device and passing the list to a destination agent on a base device in a secure environment when the agent on the base device makes itself available for requests by logging into the intermediary server and establishing a connection with the intermediary server.

17. (previously presented) The system of claim 16 wherein the remote agent couples to the intermediary server via the Internet.

18. (previously presented) The system of claim 16 wherein the intermediary server communicates with the base device responsive to the agent indicating the agent is available for communication.

## IX. EVIDENCE APPENDIX *(37 C.F.R. §41.37(c)(ix))*

None

## X. RELATED PROCEEDINGS APPENDIX *(37 C.F.R. §41.37(c)(x))*

None